

A.G. Contract No.: KR02-2050TRN
ADOT ECS File No.: JPA 02-074-Amendment One
Project No.: U070-A-504
Section: Rest Area on US 70, MP 294
TRACS No.: H5936 01C
Budget Source Item No.: 12402

AMENDMENT NO. ONE (1)

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
SAN CARLOS APACHE INDIAN NATION
THROUGH BYLAS DISTRICT

THIS AGREEMENT is entered into 11th May 2004, **Amendment One** to JPA 02-074, AG Contract No.: KR02-2050TRN, filed 12 March, 2003, filed with the Secretary of State under No. 25882, pursuant to Arizona Revised Statutes Sections 11-951 through 11-954, as amended between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and SAN CARLOS APACHE INDIAN NATION, BYLAS DISTRICT, acting by and through its San Carlos Apache Tribal Council, (the "Tribe").

I. RECITALS

1. State is empowered by Arizona Revised Statutes Section 28-401 and 28-334 to enter into this agreement and has delegated to the undersigned the authority to execute this agreement on behalf of the State.

2. The Tribe is empowered by the Tribal Council Resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has authorized the undersigned to execute this agreement on behalf of the Tribe.

The purpose of this Amendment is to clarify the funding and add additional funds in an amount estimated at \$500,000.00 which brings the total estimated funds to \$750,000.00 in which to complete the construction of the rest area, as outlined in the original agreement attached hereto and made a part hereof.

THEREFORE, in consideration of the mutual agreements expressed herein, the agreement is amended as follows:

NO. 25882 #0/
Filed with the Secretary of State
Date Filed: 05/11/04

Janice K. Brewer
Secretary of State

By: Timothy D. Braeneveld

II. SCOPE OF WORK

1. The State will:

Article II. 1. b. is deleted and replaced in full as follows:

b. Hereby agree to be authorized agent for the Tribe. On behalf of the Tribe and with written concurrence of the design plans, shall call for bids, construct the project using **State funds not to exceed \$750,000.00**. Shall award one or more contracts to accomplish the Project, administer same and make all payments to the contractor.

III. MISCELLANEOUS PROVISIONS

Articles III. 8 and 9 are added in full as follows:

8. This agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona, and incorporated herein by reference regarding "Non-Discrimination".

9. Non-Availability of Funds: Every payment obligation of State under this contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this contract, this contract may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

EXCEPT AS AMENDED herein, all other terms and conditions of the original Agreement remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

SAN CARLOS APACHE TRIBE

By Kathleen W. Kitcheyan
KATHLEEN WESLEY KITCHHEYAN
Tribal Chairwoman

STATE OF ARIZONA
Department of Transportation

By Susan Tellez
SUSAN TELLEZ
Contract Administrator

ATTEST:

By Ophelia T. James
Ophelia T. James
Tribal Secretary

**SAN CARLOS APACHE TRIBE
SAN CARLOS APACHE INDIAN RESERVATION
SAN CARLOS, ARIZONA**

RESOLUTION

NO: MR-03-24

WHEREAS, the San Carlos Apache Tribe is a federally recognized Indian Tribe organized pursuant to Section 16 of the Indian Reorganization Act of June 18, 1934 (48 stat., 984); and,

WHEREAS, the San Carlos Apache Tribal Council is responsible for the general health and safety of Tribal Members; and

WHEREAS, it is to the mutual advantage of the State and the Tribe to construct and maintain a new rest area facility on U.S. Highway 70 (MP 296.08); and

NOW THEREFORE BE IT RESOLVED; the San Carlos Apache Tribal Council approves and authorizes the use of approximately 3.5 acres of land located at MP 296.08 along U.S. Highway 70 for a rest area facility.

BE IT FURTHER RESOLVED; the San Carlos Apache Tribe agrees to maintain the rest area facility in an attractive and sanitary manner; and,

BE IT FINALLY RESOLVED, that the Tribal Chairwoman, Vice-Chairman or their designee are hereby authorized to sign all necessary documents to effect this Resolution including any modification thereto.

CERTIFICATION

I, the undersigned Secretary of the San Carlos Apache Tribal Council hereby certify that the Tribal Council is presently composed of 11 members, of whom 11 constituting a quorum were present at a Regular Council meeting hereto held on the 4th day of March 2003, and that the foregoing Resolution No. MR-03-24 was duly adopted by a vote of 9 for; 0 opposed 0 abstained; of the Tribal Council pursuant to Article V, Section 1 (a) of the Amended Constitution and Bylaws of the San Carlos Apache Tribe effective February 24, 1954.

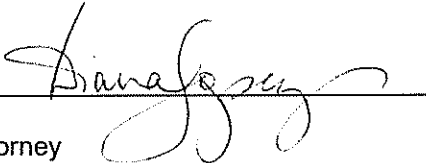

Ophelia T. James, Tribal Secretary

JPA 02-74
Amendment ONE

APPROVAL OF THE SAN CARLOS APACHE TRIBE ATTORNEY

I have reviewed the above referenced proposed intergovernmental agreement, between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and the SAN CARLOS APACHE TRIBE and declare this agreement to be in proper form and within the powers and authority granted to the Tribal Council under the laws of the ^{SAN CARLOS APACHE TRIBE} ~~State of Arizona~~. No opinion is expressed as to the authority of the State to enter into this agreement.

DATED this 29th day of April, 2004.


Attorney



OFFICE OF THE ATTORNEY GENERAL
STATE OF ARIZONA

TERRY GODDARD
ATTORNEY GENERAL

CIVIL DIVISION
TRANSPORTATION SECTION
WRITER'S DIRECT LINE: 602.542.8855

INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. KR02-2050TRN (**JPA 02-074-Amendment One**), an Agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED: May 5, 2004

TERRY GODDARD
Attorney General

A handwritten signature in cursive script, reading "Susan E. Davis", written over a horizontal line.

SUSAN E. DAVIS
Assistant Attorney General
Transportation Section